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IN THE

Supreme Court of the United States

October Term 1962

No. [redacted] 1951

SALVATORE SANTORA,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

HERBERT S. SIEGAL,
Attorney for Petitioner.

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Cases Cited

Petitioner respectfully incorporates by reference on his behalf all the cases cited in the petition of Vito Genovese who has filed a petition for similar relief as though fully set forth herein without restatement of the same.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

Petitioner respectfully asks this Court to issue a writ of certiorari to review the final judgment of the Court of Appeals for the Second Circuit which affirmed the orders of the United States District Court for the Southern District of New York denying petitioner's motion for a new trial on newly discovered evidence.

The Opinion Below

The opinion of the Court of Appeals is reported in 315 F. 2d 186.

The Grounds of Jurisdiction

(i) The judgment sought to be reviewed was dated and entered on March 8, 1963 and a petition for rehearing filed on March 22, 1963 was denied on April 10, 1963 and on May 6, 1963, Mr. Justice Harlan signed an order extending petitioner's time to file a petition for a Writ of Certiorari to and including June 8, 1963.

(ii) Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented for Review

The petitioner Salvatore Santora and the petitioner Vito Genovese were defendants in the same trial, both are involved in the proceedings herein and are seeking review of the same judgment and opinion of the Court of Appeals. The issues are substantially the same and the petitioner respectfully incorporates by reference on his behalf all the questions presented for review in the petition of Vito Genovese who has filed a petition for similar relief as though fully set forth herein without restatement of the same.

Constitutional Provisions

Petitioner respectfully incorporates by reference on his behalf all the constitutional provisions set forth in the petition of Vito Genovese who has filed a petition for similar relief as though fully set forth herein without restatement of the same.

Statutes Involved

Petitioner respectfully incorporates by reference on his behalf all the statutes involved set forth in the petition of Vito Genovese who has filed a petition for similar relief as though fully set forth herein without restatement of the same.

Statement of the Case

Upwards of a dozen persons were charged with conspiracy to violate the narcotic laws, 21 U.S.C., Sec. 173, 174. The indictment charged that the conspiracy continued from February 1, 1955 to July 7, 1958. The petitioner and fourteen defendants were convicted and petitioner was sentenced to twenty years.

All of the convictions with the exception of the defendant Rodriguez were affirmed by the Court of Appeals in U. S. against Aviles, 274 F. 2d 179, decided January 12, 1960. The Supreme Court denied certiorari on May 16, 1960, 362 U. S. 974, 982, and denied rehearing on June 20, 1960, 363 U. S. 858.

Following denial of certiorari and of rehearing petitioner's motion for a new trial was filed in the United States District Court, Southern District of New York which motions were predicated upon post trial recantations by the witness Cantellops and upon the perjurious testimony of Cantellops at the trial. Hearings on petitioner's motions were commenced before Judge Bicks and following the taking of testimony the motions for new trials were amended with leave of Court to allege deprivation of petitioner's rights under the Jencks Act, 18 U.S.C. Sec. 3500. Thereafter testimony was again taken and on May 5, 1961 Judge

Bicks filed an order denying in part and reserving decision in part upon the motions for new trials. Thereafter due to the illness of Judge Bicks, Judge Murphy was assigned by order of August 8, 1961 pursuant to Rule 25 F.R. Crim. P. to conduct "the hearing and determination of that part of the motion made by the petitioners upon which Judge Bicks had reserved decision". Thereafter on December 22, 1961, Judge Murphy rendered an opinion and order denying petitioner's motions for a new trial.

Thereafter consolidated appeals were taken to the United States Court of Appeals for the Second Circuit and on March 8, 1963 the United States Court of Appeals affirmed the orders of Judge Bicks and Judge Murphy, denying petitioners' motions for a new trial.

The only evidence purporting to link petitioner with this conspiracy was given by an informer and jailbird, one Cantellops. While he gave testimony covering the period March 1955 to May 1957, he referred to petitioner only on a few days in August, 1956. Cantellops testified to numerous meetings of others at which questions of policy were said to have been discussed, but said that petitioner Santora was not at any of them (S.M. 1382, 1383, 3476-3485). The entire evidence relating to Santora is set forth in his appendix below (pp. 6a-12a).

The testimony against Santora was based on the uncorroborated testimony of the accomplice, Cantellops; as follows:

1. A meeting in the Mexican's hotel room.
2. Two meetings in a park.
3. A trip to Philadelphia.

"NELSON SILVA CANTELLOPS

Direct examination:

(S1) Q. After the Cleveland trip, did you have occasion to make another trip? A. Yes, I make another trip.

Q. Where was that trip? Do you recall? A. It was to Miami.

Q. When as best you can recall did this Miami trip take place? A. At the beginning of August.

Q. Of which year? A. 1956.

• • •

Q. Were you picked up that night? A. Yes.

Q. Who picked you up? A. Ormento and another person.

Q. Who was the other person? Do you know? A. I never know. It was a Mexican; Mexico.

Q. Were you introduced to him? A. Yes.

Q. How were you introduced to him? A. He gave me the last name, but usually in this introducing we call each other by our nationalities.

Q. What did you call this one? A. Mexico.

Q. Had you seen him before? A. Never before.

• • •

(S6) Q. All right. When Ormento came back and talked to you then what happened? A. We went back to the Mexican's hotel.

Q. And what did you do when you got up to the hotel room? A. We went up in there and over there was the Mexican and another man.

References to the appendix of Santora on the appeal from his conviction will be designated S.

References to the appendix of this hearing are references to the appendix filed herein by appellant, Genovese, and will be designated G.

Q. Do you see that other man in this Courtroom? Will you stand up and take a look? A. The third man in the back over there.

• • •

Mr. Christy: May the record indicate that the witness has identified the defendant Santora.

Q. Were you introduced to this man? A. Yes.

Q. How were you introduced to him? A. As Tom.

Q. Tom what? A. Later I learned they call him Tom Mix.

Q. Did you hear him addressed as Tom Mix? A. Yes.

Q. And that is this man you just identified as Santora, is that correct? A. Yes.

Q. Did you have a conversation when you got up to the hotel room? A. Yes, the conversation of the trip took place again.

Q. What trip is this? A. The trip that they wanted me to make to Mexico.

Q. And what was said if you can recall? A. I refuse again.

Mr. Stim: Your Honor, may we have by whom.

(S7) Q. And by whom, as best you can recall. A. Everybody was taking part in the conversation. I can't recall exactly what everyone said.

Q. Will you tell us who was there? A. The Mexican, Tom, Ormento, Evola, Rocco and myself.

Q. All right. Now will you tell us what conversation there was as best you can recall? A. I refuse to make the trip and I say that only the trip could be done through Miami, I wouldn't do.

Q. And what was said? A. And after a long hours of discussion Evola proposed that why don't they do it like I say through Miami. The Mexican

say that if the trip was to take place through Miami he will need a few days after, he need to make a new set up.

Q. Just before the recess, Mr. Cantellops, you were telling us about the second meeting in the Mexican's room and about the trip. Now, will you tell us— A. Not the second, the third.

Q. In the Mexican's room? A. Yes.

• • •

Q. Was this the third meeting with the Mexican? A. Yes.

Q. Will you tell us what was said about the trip to Miami? A. Well, after long hours of discussion it was agreed it should be done through Miami.

Mr. Edelbaum: I move to strike it out.

The Court: Motion granted.

Tell us what was said.

Q. As best you can recall tell us what was said and by whom, will you? A. It was said in view of that I had nobody else to send over there to the borders, they will go along and try to make the trip through Miami.

Q. Who said that? A. Ormento.

(S8) Q. What was said that you can recall? A. At that time the Mexican say that he need a few days extra to make a new arrangement.

Q. Was there anything else said that you can recall? A. After it was agreed to make the trip to— after it was agreed, I was handed some money to take care of the Mexican for a few days in New York.

Q. Who handed you the money? A. Ormento.

Q. Now, at this conversation that you just described who participated in the conversation? A. We all, all, everybody concerned.

Q. Who did most of the talking that you can recall? A. Most of the talking was done by Ormento.

Q. After Ormento gave you the money what did you do? A. Things were left up to the Mexican to let Ormento know when the trip will start, and I took the Mexican for about three days and I showed him the city • • •.

Q. Did you go into the park? A. No.—At the dead end of 81st Street, over there, this park, in the middle of the park.

Q. Are there any lights in this area? A. In summer time due to the trees around it is very poor lighted place at night.

That while we were there:

I was offered by Ormento, if I wanted to make a trip to Philadelphia—and I said 'Alright, I will do it', and he gave me instructions what to do.

Q. Who gave you instructions? A. Ormento.

• • •

Q. And what happened when you got back to New York? A. About a couple of days later I got paid for that trip.

Q. And how did you get paid? A. By Ormento, 81st Street and Columbus Avenue.

Q. How did you happen to meet Ormento? A. I was picked by Ormento and Santora.

(S9) Q. Santora? A. Yes.

Q. Where did you go when you were picked up? A. To 81st Street and Columbus Avenue.

Q. That is the same place that you described a few minutes ago? A. Yes.

Q. Was this at night? A. About 9, 10 o'clock at night.

Q. When you got to the park did you have a conversation? A. Yes.

Q. First of all, did you get paid? A. Yes, I got paid.

Q. Who paid you? A. Ormento.

Q. And did you have a conversation at this time? A. Well, I was told to keep in contact and perhaps they need me for some time in the near future.

Q. Who was present at this conversation? A. Ormento, Rocco and Santora.

Q. Did you have occasion to go to Philadelphia again? A. Yes.

Q. And before you went to Philadelphia did you have a conversation with anybody? A. Yes.

Q. With whom did you talk?

• • •

Q. Would you tell us when the second trip occurred, the second trip to Philadelphia. A. Within a few days from the first one.

Q. Prior to the second trip to Philadelphia with whom did you talk? A. With Ormento and Santora.

Q. Where did you meet them? A. At 81st Street and Columbus Avenue.

Q. And how did you happen to meet them there? A. I was advised to wait for them. I don't recall if I was waiting in my house or if I have to go there, but I met them over there.

Q. Who advised you, do you recall? A. One of those everyday calls that I used to make to check what was new, I was advised to do that.

(S10) Q. And who would you call? A. Usually I used to call to Carmine Polizzano.

Q. Now you had a meeting up in the park, is that right? A. Yes.

Q. With whom? A. Santora and Ormento and Rocco.

Q. And did you have a conversation? A. Yes.

Q. And what was said that you can recall?

• • •

Q. And by whom? A. I was told by Ormento if I wanted to make a trip for Santora and I told

him where they could find me in case I decide to make the trip.

Q. Was anything else said that you can recall? A. I cannot recall too much about that.

Q. Do you recall any conversation about the purpose of the trip? A. It was another trip to Philadelphia.

Q. Was there any discussion about the purpose of the trip? A. As usual, to deliver stuff to Philadelphia.

Q. What happened after this conversation? A. I told them that they locate me in the Capitol Bar on 40th Street, 47th Street, in that vicinity, at any time after 9 o'clock.

Q. Did you have occasion to be at the Capitol Bar within the next few days? A. In fact, it happen the next day.

Q. What happened? A. I was in the Capitol Bar and I was picked up, called by somebody outside, and after I came out I met Santora.

Q. What did he say to you and what did you say to him? A. He say the trip is ready; somebody will drive you over there and gave me instructions, and he say the driver will tell you what to do when you reach Philadelphia.

Q. Did he say anything else to you? A. No, we went to 49th Street and close to Hertz Rent a Car Yourself there and there was a fellow working and he showed me the person and I got in the car with him.

Q. Who showed you the person? A. Santora.

(S11) Q. What did he say? A. He say, 'That is the guy who will drive it over there, he knows what to do when you reach Philadelphia.'

Q. Did you get in the car? A. Yes.

Q. And did you drive to Philadelphia? A. Yes.

Q. Were you introduced to the driver of the car? A. No.

Q. And what happened when you got to Philadelphia? A. We went to Germantown Avenue and we stop in front of a small park.

Q. A small bar? A. Park.

Q. Park? A. Yes, and we got off. Before we got off, the fellow got the stuff from behind the seat where he was sitting.

Q. How was it wrapped? A. A flat brown paper with scotch tape around.

Q. And then what happened? A. He handed it to me and he told me he will be a few feet away, that when he come walking behind a fellow that was supposed to pick up, he will make a sign with his handkerchief, and that was the fellow that was supposed to pick this up.

Q. After this conversation what happened? A. I got off and I stood around the car while he went a few feet away.

Q. That is, the driver? A. The driver. When this person came, he came behind the person, pulled his handkerchief, and I knew the sign, so I cross with the person, and I leave the package on his hands.

Q. You made a pass of the package, is that right? A. Yes.

Q. What was in the package, do you know? A. I was told was stuff.

Q. After you made the pass of the stuff to this man what did you do then? A. We drove back to New York.

Q. And did you get paid for this trip? A. Yes.

(S12) Q. And would you tell us the circumstances under which you got paid? A. I got a note—I got a message that I should be in my home again and I was picked that night again.

Q. Who picked you up? A. Ormento, Evola and Rocco, Santora.

Q. Ormento, Rocco and Santora? A. And Evola.

Q. And who else? A. Evola.

Q. Did you get paid for this trip? A. At that meeting, yes.

Q. Who paid you? A. Santora.

Q. At this meeting was there a conversation? A. Yes.

Q. And what was said? First of all, where was this meeting? A. In 81st St. and Columbus Ave.

Q. In the park? A. Yes.

Q. And what was said at this meeting as best you can recall and by whom? A. After all the conversation was done all I understood was that there was to be a delivery next day to Brooklyn."

Cantellops made the following recantations of his testimony against Santora

The July 22nd, 1960 recantation.

The July 20th, 1960 recantation.

Mt. Carmel Church recantation on January 27th, 1960.

Cantellops, in his recantations, stated,

(G-408) That he never had a transaction with Santora—didn't know the man.

(G-410) That the Mexican was a friend of his—not in the narcotics business * * * that he picked that hotel and that room because he had been in that hotel and room on many occasions with the Mexican. That the Mexican didn't have anything to do with these defendants. Never in the room. That he picked the park (G-410), because the wife of the Mexican had moved out on him, that the Mexican had an argument with his wife and she moved to a hotel facing that park and they used to sit there. That's how he came to pick that park (G-411).

Cantellops denied knowing Santora (G-436), never met Santora and Evola and the others he had testified he met in the Mexican's room; Cantellops said that had never taken place.

Cantellops said he never made a trip for Santora to Philadelphia (G-436).

That he never met with any of these defendants at the park (G-448). That he never met Ormento and never had any transactions with him (G-449).

Reasons for Granting the Writ

It is respectfully submitted that if Cantellops never knew Ormento then his testimony with respect to Santora must be untruthful, because Cantellops had testified at the trial that it was Ormento who was with Santora.

The testimony at the hearing that Cantellops had stated that he had never met Santora, had never made a trip to Philadelphia for Santora, that there were no meetings at the park and that there never was any meeting up in the Mexican's room directly refutes Cantellops testimony at the trial, and thus establishes Cantellops' untruthfulness at the trial.

The recantation at the Mt. Carmel Church was made in the presence of a Priest, a Notary Public and three lawyers on January 27th, 1960.

The recantations of July 20th and July 22nd 1960 at Siegal's office, testified to fully and in detail by Siegal, was fully corroborated by the tape recordings played before the Court and by the transcripts of said tape recordings.

The evidence against Santora was not only from a single source but limited in amount. It consisted entirely of testimony as to a meeting in a hotel room, two meetings in a park and a trip to Philadelphia.

The recantations establish conclusively that Cantellops' testimony at the trial was a deliberate lie.

It is respectfully submitted that the petitioner, Santora, has established that Cantellops gave false testimony which "Might Have" affected the verdict against him, and that the petitioner Santora's rights under the Jencks Act were violated.

Petitioner respectfully incorporates by reference in his behalf all of the contentions and citations set forth in the petition of Vito Genovese who has filed a petition for similar relief as though fully set forth herein without restatement of the same.

I respectfully submit, therefore, that this Court issue a writ of certiorari to the United States Court of Appeals for the Second Circuit to review the conviction of petitioner.

Respectfully submitted,

HERBERT S. SIEGAL,
Attorney for Petitioner.

APPENDIX A

Judgment sought to be reviewed.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighth day of March one thousand nine hundred and sixty-three.

Present:

HON. STERRY R. WATERMAN,
HON. LEONARD P. MOORE,
HON. THURGOOD MARSHALL,
Circuit Judges.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALFREDO AVILES, et al.,

Defendants,

CHARLES BARCELONA, et al.,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of New York.

Appendix A—Judgment sought to be reviewed

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the orders of said District Court be and they hereby are affirmed.

A. Daniel Fusaro
Clerk

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